

9-29-2011

# State v. Olin Augmentation Record Dckt. 38056

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# In the Supreme Court of the State of Idaho

STATE OF IDAHO,

Plaintiff-Respondent,

v.

JERRY LEE OLIN,

Defendant-Appellant.

)  
) ORDER GRANTING MOTIONS TO  
) AUGMENT, LEAVE TO FILE A  
) REVISED BRIEF AND TO SUSPEND  
) THE BRIEFING SCHEDULE  
)  
) Supreme Court Docket No. 38056-2010  
) Kootenai County Docket No. 2009-22659  
)

A MOTION TO AUGMENT AND TO SUSPEND THE BRIEFING SCHEDULE AND STATEMENT IN SUPPORT THEREOF and a MOTION FOR LEAVE TO FILE A REVISED BRIEF AND AFFIDAVIT were filed by counsel for Appellant on September 8, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT be, and hereby is, GRANTED and the District Court Reporter shall prepare and lodge the transcripts listed below with this Court within twenty-eight (28) days of the date of this ORDER and the District Court Clerk shall immediately serve counsel and file the transcripts with this Court. Any corrections shall be filed with this Court as provided by I.A.R. 30.1.

1. Transcript of the Illegal Sentence hearing conducted on June 2, 2011; and (Court Reporter JoAnn Schaller)(estimate of pages: less than 100)
2. Transcript of the Illegal Sentencing hearing conducted on July 21, 2011. (Court Reporter JoAnn Schaller)(estimate of pages: less than 100)

IT FURTHER IS ORDERED that the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

1. Amended Judgment, file-stamped July 29, 2011.

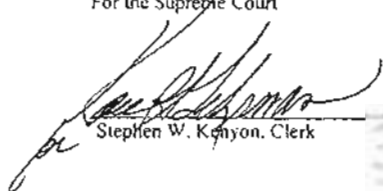
IT FURTHER IS ORDERED that Appellant's MOTION FOR LEAVE TO FILE A REVISED BRIEF be, and hereby is, GRANTED and a REVISED APPELLANT'S BRIEF shall be filed with this Court within thirty-five (35) days of the receipt in this Court of the transcripts requested in the Motion to Augment.

ORDER GRANTING MOTIONS TO AUGMENT, LEAVE TO FILE A REVISED BRIEF AND TO SUSPEND THE BRIEFING SCHEDULE - Docket No. 38056-2010

IT FURTHER IS ORDERED that Appellant's MOTION TO SUSPEND THE BRIEFING SCHEDULE be, and hereby is, GRANTED and proceedings in this appeal are SUSPENDED until the transcripts listed above are filed with this Court at which time the due date for filing Appellant's Revised Brief shall be set.

DATED this 29<sup>th</sup> day of September, 2011.

For the Supreme Court

  
Stephen W. Kenyon, Clerk

cc. Counsel of Record  
District Court Clerk  
District Court Reporter

ORDER GRANTING MOTIONS TO AUGMENT, LEAVE TO FILE A REVISED BRIEF AND TO SUSPEND THE BRIEFING SCHEDULE - Docket No. 38056-2010

# In the Supreme Court of the State of Idaho

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	ORDER GRANTING MOTION TO
	)	AUGMENT THE RECORD
v.	)	
	)	Supreme Court Docket No. 38056-2010
JERRY LEE OLIN,	)	Kootenai County Docket No. 2009-22659
	)	
Defendant-Appellant.	)	

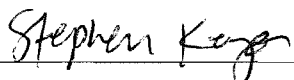
A MOTION TO AUGMENT THE RECORD AND STATEMENT IN SUPPORT THEREOF was filed by counsel for Respondent on January 25, 2012. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

1. Motion for Correction of Sentence Under I.C.R. 35, file-stamped April 18, 2011.

DATED this 17 day of January, 2012.

For the Supreme Court

  
\_\_\_\_\_  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

ORIGINAL

BARRY McHUGH  
 Prosecuting Attorney  
 501 Government Way/Box 9000  
 Coeur d'Alene, ID 83814  
 Telephone: (208) 446-1400

ASSIGNED ATTORNEY:  
 ARTHUR VERHAREN

STATE OF IDAHO  
 COUNTY OF KOOTENAI  
 FILED

1001

2011 APR 18 AM 10:23

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Case No. F09-22659

Plaintiff,

vs.

**MOTION FOR CORRECTION  
 OF SENTENCE UNDER I.C.R. 35**

JERRY LEE OLIN,

Defendant.

COMES NOW, Arthur Verharen, Deputy Prosecuting Attorney for Kootenai

County, and hereby moves this Court for its order correcting the sentence in this matter  
 for the following reason:

Following plea negotiations, Olin was charged under an Amended Indictment of  
 committing three counts of Sexual Abuse of a Child under the Age of Sixteen Years in  
 violation of Idaho Code §18-1506 for conduct which occurred between November, 2001  
 and September, 2002. (Amended Indictment.) Following Olin's guilty plea to the  
 amended charges, the Court imposed three sentences of 20 years with ten years fixed and  
 ran them concurrently, "[f]or a total unified sentence not to exceed twenty (20) years,  
 commencing with a fixed period of ten (10) years, to be followed by an additional  
 indeterminate period of ten (10) years." (Judgment.)

The applicable penalty section of Idaho Code §18-1506 that was in effect during 2001-2002 provided that "[a]ny person guilty of a violation of the provisions of this section shall be imprisoned in the state prison for a period not to exceed fifteen years." I.C. §18-1506(5) (2002). In 2006, the Idaho State Legislature increased the maximum punishment for the offenses charged from 15 years to 25 years. I.C. §18-1506(5) (2006).

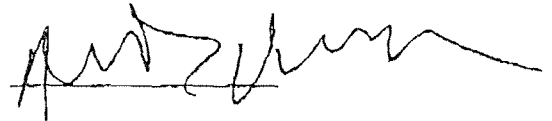
Applying the 2006 amendment to I.C. §18-1506 retroactively increases the punishment for Olin's crimes in violation of the ex post facto provisions of Article I §10 of the United States Constitution and Article I §16 of the Idaho State Constitution. See Calder v. Bull, 3 U.S. 376, 390 (1798) ("Every law that ... inflicts greater punishment, than the law annexed to the crime, when committed" is an ex post facto law). Because the maximum sentence applicable to Olin's conviction is up to 15 years, his sentences of 20 years with ten years fixed are illegal. As such, the State requests that the current sentences be vacated and that the Defendant be resentenced.

DATED this 15 day of April, 2011.

  
ARTHUR VERHAREN  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 15 day of April, 2011, a true and correct copy of the foregoing was caused to be FAXED to PUBLIC DEFENDERS OFFICE.

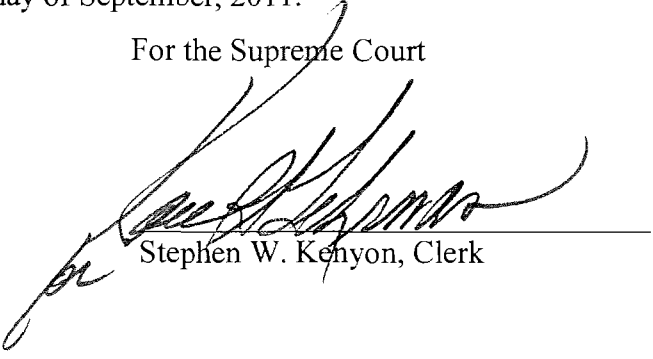


ORDER GRANTING MOTIONS TO AUGMENT, LEAVE TO FILE A REVISED BRIEF AND  
TO SUSPEND THE BRIEFING SCHEDULE – Docket No. 38056-2010

IT FURTHER IS ORDERED that Appellant's MOTION TO SUSPEND THE BRIEFING SCHEDULE be, and hereby is, GRANTED and proceedings in this appeal are SUSPENDED until the transcripts listed above are filed with this Court at which time the due date for filing Appellant's Revised Brief shall be set.

DATED this 29<sup>th</sup> day of September, 2011.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record  
District Court Clerk  
District Court Reporter

ORDER GRANTING MOTIONS TO AUGMENT, LEAVE TO FILE A REVISED BRIEF AND  
TO SUSPEND THE BRIEFING SCHEDULE – Docket No. 38056-2010

FILED 7-29-11 AT 4:30 P.M.  
 STATE OF IDAHO, COUNTY OF KOOTENAI SS  
 CLERK OF THE DISTRICT COURT  
 BY *[Signature]* DEPUTY  
 TUB

**FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO  
 IN AND FOR THE COUNTY OF KOOTENAI  
 324 W. GARDEN AVENUE  
 COEUR D'ALENE, IDAHO 83814**

STATE OF IDAHO  
 Plaintiff,

vs.

Jerry Lee Olin  
 Defendant.

DOB: [REDACTED]  
 DL or SSN: [REDACTED] ID

Case No: CR-2009-0022659

**AMENDED**

**JUDGMENT**

*On July 21, 2011, a Rule 35 Motion was argued before the Court. The Court acknowledged the original sentence was illegal, thereby granting the Rule 35 Motion. This amended judgment reflects the reduction of the indeterminate portion of the original sentence.*

On Wednesday, August 18, 2010, before the Honorable Benjamin R. Simpson, District Judge, you, Jerry Lee Olin, personally appeared for sentencing. Also appearing were Art Verharen, Deputy Prosecuting Attorney for Kootenai County, and your counsel, Anne Taylor, Deputy Public Defender.

WHEREUPON, the previously ordered presentence report having been filed, and the Court having ascertained that you have had an opportunity to read the presentence report and review it with your lawyer, and you having been given the opportunity to explain, correct or deny parts of the presentence report, and you having been given the opportunity to make a statement, and recommendations having been made by counsel for the State and by your lawyer, and there being no legal reason given why judgment and sentence should not then be pronounced, the Court did then pronounce its sentencing disposition.



**IT IS HEREBY ORDERED** that you, having been advised of and having waived your constitutional rights to: a) trial by jury; b) remain silent; and c) confront witnesses, and thereafter having pled guilty to the criminal offense(s) charged in the Information on file herein as follows:

**Count 2 - Idaho Code §18-1506 Sexual Abuse of a Child Under 16 Years of Age, a felony.**

**Count 6 - Idaho Code §18-1506 Sexual Abuse of a Child Under 16 Years of Age, a felony.**

**Count 8 - Idaho Code §18-1506 Sexual Abuse of a Child Under 16 Years of Age, a felony.**

**THAT YOU ARE GUILTY OF THE CRIMES SO CHARGED**, and now, therefore,

**IT IS FURTHER ORDERED** that, pursuant to Idaho Code §19-2513, you are sentenced as follows:

**For a total unified sentence not to exceed fifteen (15) years, commencing with a fixed period of ten (10) years, to be followed by an additional indeterminate period of five (5) years.**

**Sentences on all counts shall run concurrent.**

**IT IS FURTHER ORDERED** that you are committed to the custody of the Idaho State Board of Correction on Wednesday, August 18, 2010.

**IT IS FURTHER ORDERED** that you are remanded to the custody of the Kootenai County Sheriff pending transport to the Idaho State Board of Correction.

**IT IS FURTHER ORDERED** that you will be given credit for time served on any sentence imposed on the above charge.

**IT IS FURTHER ORDERED** that the Court having found you to have either the present or the future ability to pay, you shall pay court costs of \$300.00.

1. That you shall pay additional costs, fees, fines and reimbursements as follows:

a.	Reimburse the District Court Fund	\$150.00
b.	Reimburse prosecution costs	\$150.00
c.	Reimburse defense costs	\$150.00

*A \$2.00 handling fee will be imposed on each installment/partial payment.*

**IT IS FURTHER ORDERED** that any bail posted in this matter shall be exonerated, provided that any deposit shall be applied pursuant to Idaho Code §19-2923.

#### **SEXUAL OFFENDERS**

**IT IS FURTHER ORDERED** that you shall comply with the provisions of the Idaho DNA and Genetic Marker Database Act of 1996 pursuant to Idaho Code §19-5506.

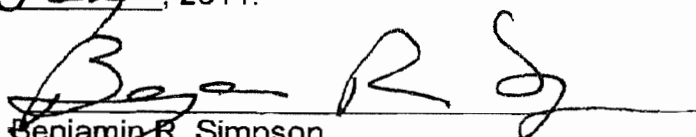
**IT IS FURTHER ORDERED** that you shall fully comply with all sexual offender registration laws.

#### **NOTICE OF RIGHT TO APPEAL**

**YOU ARE HEREBY NOTIFIED** that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

**YOU ARE FURTHER NOTIFIED** that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

DATED this 29 day of July, 2011.

  
Benjamin R. Simpson  
District Judge

**CERTIFICATE OF MAILING/SERVICE**

I hereby certify that on the 29 day of July, 2011, copies of the foregoing Judgment were mailed, postage prepaid, faxed, or sent by interoffice mail to:

- ☒ Prosecuting Attorney for Kootenai County (FAX 208-446-1833)
- ☒ Anne Taylor, Deputy Public Defender (FAX 208-446-1701) 2186
- ☒ Idaho Department of Correction (FAX 208-327-7445)
- ☒ Probation & Parole (FAX 208-769-1481)
- ☒ Kootenai County Sheriff's Department (FAX 208-446-1407)
- ☒ Idaho Supreme Court of Appeals (P.O. Box 83720, Boise, ID 83720-0101, certified copy)

#  
9/13

CLIFFORD T. HAYES  
CLERK OF THE DISTRICT COURT

By   
Deputy Clerk

\*\*\*\*\*  
\*\*\* RX REPORT \*\*\*  
\*\*\*\*\*

RECEPTION OK

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